UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/49/418
22 September 1994

ORIGINAL: ENGLISH

Forty-ninth session
Item 108 of the provisional agenda*

REVIEW OF THE EFFICIENCY OF THE ADMINISTRATIVE AND FINANCIAL FUNCTIONING OF THE UNITED NATIONS

Jurisdictional and procedural mechanism for the proper management of resources and funds of the United Nations

Report of the Ad Hoc Intergovernmental Working Group of Experts established pursuant to General Assembly resolution 48/218 A

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 6	3
II.	ORGANIZATIONAL MATTERS	7 - 15	3
III.	SUBSTANTIVE MATTERS	16 - 28	5
IV.	RECOMMENDATIONS	29 - 35	7
V.	ADOPTION OF THE REPORT	36	10
VI.	CLOSURE OF THE SESSION	37	10

* A/49/150.

94-36935 (E) 260994 270994

/...

CONTENTS (continued)

Page

Annexes

I. List of experts 12

II. List of documents 15

III. List of invited representatives of United Nations bodies and offices 17

I. INTRODUCTION

1. On 23 December 1993, the General Assembly adopted resolution 48/218 A, entitled "Review of the efficiency of the administrative and financial functioning of the United Nations". In section III of that resolution, the Assembly, stressing the necessity for the proper management of resources and funds of the United Nations and determined to address alleged cases of fraud in the United Nations in an impartial manner, in accordance with due process of law and full respect for the rights of each individual concerned, especially the rights of defence, decided to study the possibility of the establishment of a new jurisdictional and procedural mechanism or of the extension of mandates and improvement of the functioning of existing jurisdictional and procedural mechanisms.

2. The General Assembly also decided to establish an ad hoc intergovernmental working group of experts in the legal and financial fields, which was to work in consultation with the relevant existing bodies and was to submit a report to the Assembly with specific recommendations no later than at its forty-ninth session.

3. The General Assembly further decided that the Working Group would consist of 25 members and invited the President of the General Assembly to define the composition of the Working Group with due regard for equitable geographical representation and to convene it as soon as possible but no later than 31 March 1994.

4. The Secretary-General was requested by the General Assembly to provide the Working Group with the necessary services and to seek the views of Member States on the issue of the new mechanism or the extension of mandates and improvement of the functioning of existing mechanisms, and to bring those views to the attention of both the Working Group and the Assembly.

5. Pursuant to that request, the Secretary-General, on 3 February 1994, addressed a note verbale to all Member States requesting their views on the issue. The replies of 14 Governments are contained in documents A/49/98 and Corr.1 and Add.1 and 2.

6. The Ad Hoc Intergovernmental Working Group of Experts held three sessions at Headquarters, the first from 11 to 15 April 1994, the second from 13 to 17 June 1994 and the third from 6 to 9 September 1994.

II. ORGANIZATIONAL MATTERS

A. Opening of the session

7. The first session of the Working Group was opened by the President of the forty-eighth session of the General Assembly. He welcomed all the participants and recalled the circumstances under which the Assembly had decided to establish the Working Group. He noted that the Assembly had been considering ways and means of improving the efficiency of the Organization, including how to deal with cases of fraud and presumptive fraud. He recalled that, at the forty-

eighth session, the question of the adequacy of the judicial mechanism in existence for the Organization to deal with cases of fraud had been raised by the Minister for Foreign Affairs of France. The President recalled that, following discussions in the Fifth Committee, it had been unanimously agreed to establish an ad hoc intergovernmental working group of experts in the legal and financial fields to review the matter, with a view to determining whether a new jurisdictional and procedural mechanism would be warranted or whether the situation required an extension of the mandates and an improvement of the functioning of existing jurisdictional and procedural mechanisms.

8. The President acknowledged that the task before the Ad Hoc Working Group was a difficult one. However, he was confident that given the experience and expertise of the participants they would overcome the difficulties. He wished the Working Group success in its work.

B. Attendance

9. The first and second sessions were attended by experts from 24 Member States, while the third session was attended by experts from 20 Member States. The list of experts is contained in annex I to the present report.

C. Election of officers

10. At its 1st meeting, on 11 April 1994, the Working Group elected by acclamation Mr. Mame Balla Sy (Senegal) as its Chairman. The Chairman thanked the Working Group for the confidence placed in him and observed that the subject before the Working Group was a very important and complex one. He expressed his confidence, however, that through their joint endeavours they would arrive at a successful conclusion. He was particularly encouraged by the range of expertise of the members of the Working Group.

11. Three Vice-Chairmen, Mr. Pedro Desiderio Blandino Canto (Dominican Republic), Mr. Movses Abelian (Armenia) and Ms. Bonnie Miller (Canada), and a Rapporteur, Mr. N. Sivasubramanian (India), were also elected by acclamation.

D. Adoption of the agenda

12. At its 1st meeting, on 11 April 1994, the Working Group adopted the following agenda:

1. Election of officers.

2. Adoption of the agenda and organization of work.

3. Alleged cases of fraud in the United Nations: study of the possibility of the establishment of a new jurisdictional and procedural mechanism or of the extension of the mandates and improvement of the functioning of existing jurisdictional and procedural mechanisms.

4. Adoption of the report of the Ad Hoc Intergovernmental Working Group on its first session.

13. The Working Group agreed that the same agenda would be followed at the second and third sessions.

E. Organization of work

14. At its first session, the Working Group accepted in principle to organize its work along the lines contained in a conference room paper.

F. Documentation

15. The Working Group was provided with a number of documents, the list of which is contained in annex II. Additional information was provided by representatives of invited United Nations bodies and offices (see annex III).

III. SUBSTANTIVE MATTERS

16. The Working Group started its work on the basis of an examination of existing financial and disciplinary rules and procedures within the scope of its mandate in order to determine to what extent such rules and procedures were satisfactory and whether improvements or changes might be recommended.

17. Statements were made by members of the Working Group concerning the scope and nature of their mandate. In that connection, the Working Group sought clarification from the Secretariat concerning the definition of fraud, its magnitude and the existing stages through which an alleged case of fraud would be submitted.

18. The view was expressed that it was important to study situations that might arise when financial fraud was committed or allegedly committed by United Nations staff and the national judicial proceedings that might be applied in such cases, as well as the question of the privileges and immunities of staff members and the Organization in such judicial proceedings.

19. The Working Group recalled the high standards of conduct required of staff members of the United Nations, which had been codified in article I of the Staff Regulations. It attributed the greatest importance to the full implementation of those standards in the work of the Organization. That becomes all the more necessary in the context of conflict of interest. The Working Group observed that the rules did not apply to members of troop contingents and other military personnel supplied to the United Nations by Member States for peace-keeping purposes. It considered that that gap required attention by the Organization.

20. The Working Group considered that in appointing personnel to senior positions with significant financial responsibilities, there should be written terms of reference setting out the nature of those responsibilities, the actions

expected of the staff member concerned and how he or she was to be held accountable.

21. The Working Group attributed importance to the concept of job rotation. It considered that the Organization should reinforce the importance of and need for better job rotation, notwithstanding the fact that it faced a considerable challenge in staffing its offices and missions around the world.

22. Several members of the Working Group stressed the need to have certain analyses provided, such as, for example, information on the magnitude of fraud cases in terms of both numbers and dollar value and on the number of cases strictly considered as emanating from a violation of the Financial Regulations and Rules of the United Nations, such as the bidding and procurement procedures.

23. The Working Group concluded that those issues would have to be addressed at its second session. The Secretariat was therefore requested to provide relevant information and, where necessary, to prepare documents for that purpose.

24. At its second session, the Working Group discussed the following issues, taking into account the additional information provided by the Secretariat:

(a) The magnitude of the problem and frauds committed from outside and inside the United Nations;

(b) Existing rules, procedures and mechanisms dealing with the prevention and detection of financial irregularities;

(c) Disciplinary mechanisms;

(d) Recovery.

25. In regard to the above-mentioned matters, the Working Group decided that members would submit concrete proposals, which would be discussed in depth at its third and final session, at which it would adopt its recommendations to the General Assembly.

26. Having submitted written proposals, 1/ the expert from France was requested to provide clarification of some of his proposals. Following an extensive exchange of views on that paper, the Working Group felt that the proposals represented a good basis for further study.

27. Many experts submitted proposals for tentative recommendations. The Working Group decided to confine its third session to considering these as well as other proposals that might be submitted.

28. At its third session, the Working Group first took note of the initiatives in the context of its work that had been taken by both the General Assembly and the Secretary-General during the period between the end of its second session and the beginning of its third session. It was noted that a report of the Secretary-General dated 5 August 1994 entitled "Establishment of a transparent and effective system of accountability and responsibility" 2/ was under consideration. By its resolution 48/213 B of 29 July 1994, the Assembly decided

to establish an Office of Internal Oversight Services to assist the Secretary-General in fulfilling his internal oversight responsibilities in respect of the resources and staff of the Organization. Further, the Secretary-General had initiated a review of the Financial Regulations and Rules and was in the process of convening a group of high-level experts to advise him on contracts and procurement procedures.

IV. RECOMMENDATIONS

29. The Working Group, having considered the substantive matters mentioned in section III above, concluded that there was a need to improve in certain aspects, and to strengthen in others, the financial administration of the Organization. The Working Group noted that important steps had already been initiated, by both the General Assembly and the Secretary-General, in this regard. While welcoming these developments, the Working Group nevertheless is of the view that additional action needs to be taken.

30. In establishing the Working Group, the General Assembly reiterated that it was determined to address alleged cases of fraud in the United Nations. In this context, the Working Group took note of the extraordinary increase in the conduct of peace-keeping operations in recent years and consequent high levels of expenditure. It noted a number of financially significant instances of fraud or presumptive fraud in that area and it concluded that, in view of the extremely high level of expenditure involved, procurement for peace-keeping operations constituted a major risk area of possible fraud or other abuse against the United Nations, both outside and within the Organization.

31. The Working Group also studied with care the material provided to it by the Secretariat concerning cases of fraud and presumptive fraud arising from within the United Nations during the biennium 1992-1993 and the two immediately preceding bienniums. In employing the term fraud, the Secretariat excluded waste, abuse, property loss or misleading financial information. In recent years, such cases of fraud and presumptive fraud arising from within the United Nations, have, according to the statistics presented to the Working Group by the Secretariat, not resulted in significant financial loss to the Organization. However, the Working Group considers that remedial efforts are also warranted in such cases, whether arising within or outside the Organization, and the results should be reported to the General Assembly.

32. The Working Group therefore recommends for the consideration of the General Assembly the following measures, which it considers would reduce the potential for fraud and presumptive fraud against the United Nations:

(a) Along the lines of the standing instruction from the United Nations Controller referred to in the report of the Secretary-General of 8 October 1992 (A/47/510, para. 8) for notifying the Controller of cases of fraud, suitable provisions should be made in the Financial Regulations and Rules and the Staff Regulations and Rules requiring every staff member of the United Nations to bear responsibility for the protection of the financial integrity of the United Nations and requiring him or her to report without delay to the Secretary-General any instance in which there appears to be financial irregularity or

misconduct involving the financial integrity of the United Nations, whether arising within or outside the Organization;

(b) Greater emphasis should be given to periodic training at Headquarters and other major duty stations for all authorized personnel engaged in certifying, approving, disbursing, inventory and assets control, inspecting and contracting functions having significant financial implications, and especially those similarly engaged in peace-keeping and procurement operations. The training would also cover promoting fraud awareness and ethics relevant especially to those involved in field operations;

(c) In order to promote transparency, the Working Group considered at length the usefulness and scope for the establishment of a new intergovernmental body or bodies of experts nominated by Member States and approved by the General Assembly for such purposes as, but not limited to:

(i) Overseeing the periodic review and revision of the financial and staff regulations and advising on preventive measures necessary to reduce the risk of financial irregularities;

(ii) The adjudication of complex cases of financial irregularity and fraud, and providing an opinion on the responsibility attaching to the persons involved in cases of financial irregularity and fraud;

(iii) Advising on financial matters relating to peace-keeping operations, including in particular liquidation procedures;

(iv) Monitoring the contracting process.

The Working Group would suggest that the General Assembly might study this matter further in the light of its recent initiatives;

(d) The Statute of the United Nations Administrative Tribunal should be amended to give it jurisdiction to adjudicate financial claims submitted by the Secretary-General against staff members;

(e) It is essential to take speedy action in cases of lack of integrity, as distinct from other cases of misconduct, and the Secretary-General should consider the use of provisions of article IX of the Staff Regulations to separate from service staff members whose conduct does not meet the highest standards of integrity. Invoking provisions of article IX would be preferable in cases where it is not considered necessary to deny the person payment of termination indemnity rather than carrying out the time-consuming disciplinary measures applicable to the circumstances of the case;

(f) The rules and instructions issued for constitution of the Joint Disciplinary Committee should be reviewed and provisions made in the revised rules and instructions for full-time secondment of staff members from the same or other duty stations to serve on the Joint Disciplinary Committee for the duration of the work of the Committee. Provision may also be made alternatively for the nomination of former employees or of experts from the same or nearby duty stations on the Joint Disciplinary Committee, in consultation with the

staff, where nomination of staff members to the Committee cannot be effected within the time prescribed for the constitution of the Committee;

(g) The General Assembly should consider recommending that Member States:

(i) Extend to the United Nations and to other Member States assistance in investigating and securing criminal prosecution of individuals who defraud or attempt to defraud the United Nations;

(ii) Consider enacting legislation making fraud and attempted fraud against the United Nations subject to the jurisdiction of national courts and punishable by appropriate penalties.

33. In the context of the above, the Working Group recommends that:

(a) In view of the changing mandates and requirements of the Organization, the Secretary-General should review periodically the Financial Rules and the relevant administrative instructions and amend them as appropriate;

(b) In the context of the review of the Financial Rules, and the relevant administrative instructions, suitable clarifications and a more precise definition of the following should be provided:

(i) The functions and responsibilities of: the Headquarters and, in the field, local Committees on Contracts; and the requisitioning, certifying, approving, and receiving and inspection officers;

(ii) The rules governing the delegation of authority, especially in the finance and procurement areas;

(c) The Secretary-General should promulgate additional financial and staff rules specifically for and limited to temporary peace-keeping missions that would:

(i) Ensure the independence and objectivity of persons appointed for procurement functions;

(ii) Provide for expeditious staffing and equipping of the missions;

(iii) Establish a time-limit within which an initial audit of the mission would be undertaken and provide a schedule for follow-up action;

(iv) Introduce suitable procedures and mechanisms to ensure expeditious action against personnel, both civilian and military, found to have caused damage to or loss or destruction of United Nations property;

(v) Define and delimit the circumstances for the write-off of United Nations property;

(vi) Elaborate specific procedures for the closure of the missions, including repatriation of staff and liquidation of United Nations assets;

(vii) Identify and compile a roster of banking institutions that would be willing to undertake banking activities for the United Nations in high-risk missions.

34. The Working Group would also advise the Secretary-General that surcharges should be imposed on staff members who violate the provisions of the Financial Regulations and Rules and other financial instructions of the United Nations. Where needed, amendments should be made to the Financial Regulations to amplify their provisions to enable the levy of surcharges.

35. While the primary responsibility for the prevention and detection of fraud is that of management, the Working Group believes that the strengthening of the internal and external audit functions would contribute greatly to the deterrence of fraud and other misconduct in the United Nations. Accordingly, it strongly endorses the initiatives under way in this direction. The Working Group also recommends that the Secretary-General monitor the effectiveness of the newly established United Nations Development Programme (UNDP) Committee on Personal Responsibility and Financial Liability and consider whether it would be useful to establish a similar mechanism in the United Nations. The Board of Auditors, in its recent report on UNDP, 3/ noted that the Committee was an innovation in the United Nations system and saw much merit in its activities as it sent a clear signal to staff that they were responsible for the propriety of their actions.

V. ADOPTION OF THE REPORT

36. At the 6th meeting of the third session, the Rapporteur introduced and orally amended the draft report of the Working Group. 4/ He stated that the recommendations contained in the draft report were the results of efforts made to obtain consensus. He therefore hoped that the report would be adopted by consensus. Following receipt of additional oral amendments from some experts, the draft final report as orally amended was adopted by consensus.

VI. CLOSURE OF THE SESSION

37. At the 6th meeting, the Chairman thanked the experts for the manner and spirit in which they had conducted their work. He was gratified that despite the complexity of the issues, the Working Group had managed to agree on the measures they considered necessary in order to improve the financial management of the Organization. He thanked the members of the Bureau for their assistance and cooperation. In particular, he commended the Rapporteur for the successful negotiation of the recommendations and for the timely production of the draft final report. The Chairman wished to record his appreciation and that of the other experts to the Secretary of the Working Group for the assistance that she provided. He also expressed appreciation to all the Secretariat staff for their support, and declared the work of the Ad Hoc Intergovernmental Working Group of Experts completed and the session closed.

Notes

1/ A/AC.243/1994/L.6.

2/ A/C.5/49/1.

3/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 5A (A/49/5/Add.1), sect. II, paras. 89-98.

4/ A/AC.243/1994/L.9 and Add.1.

ANNEX I

List of experts

Representatives

ALGERIA	Mr. M'hand Ladjouzi, Counsellor, Expert on Administrative and Budgetary Questions, Ministry of Foreign Affairs
ARGENTINA	H.E. Ms. Susana Ruiz Cerutti, Representative to the Swiss Confederation
ARMENIA	Mr. Movses Abelian, First Secretary, Permanent Mission
AZERBAIJAN	Mr. Rufat N. Novruzov, Counsellor, Permanent Mission
BARBADOS	H.E. Mr. E. Besley Maycock, Permanent Representative to the United Nations
BRAZIL	Mr. Lucius Maia Araujo, Auditor, Secretariat of the Treasury
CANADA	Ms. Bonnie Miller, Assistant Auditor General
CHINA	Mr. Baoliu Wang, Minister, Special Adviser on Economic Issues, Department of International Organizations and Conferences, Ministry of Foreign Affairs
COLOMBIA	Mr. Alfredo Rey, Minister Plenipotentiary, Permanent Mission
DOMINICAN REPUBLIC	H.E. Mr. Pedro Desiderio Blandino Canto, Permanent Representative to the United Nations
EGYPT	H.E. Mr. Adel El Safty, Assistant to the Minister of Foreign Affairs for Multilateral Relations
FINLAND	Dr. Erkki A. Kourula, Minister Counsellor, Permanent Mission
FRANCE	Mr. Pierre Lelong, Conseiller Maître de la Cour des comptes
GERMANY	Mr. Helmut Kitschenberg, President of the Federal Academy for Public Administration

INDIA	Mr. N. Sivasubramanian, Deputy Comptroller and Auditor General
JAPAN	Mr. Yoshikazu Toyama, First Secretary, Permanent Mission
JORDAN	Dr. Hanna S. Odeh, External consultant to the World Bank and the International Fund for Agricultural Development
MALAYSIA	Mr. Rosli bin Abdullah, Director of Corporate and Management Support, Accountant General Department, Ministry of Finance
MALI	Mr. Nahamane Amadou Maiga, Second Counsellor (economic, social, administrative and budgetary questions), Permanent Mission
RUSSIAN FEDERATION	Mr. Vladimir V. Kuznetsov, Counsellor, Permanent Mission
SENEGAL	Mr. Mame Balla Sy, Minister Counsellor, Permanent Mission
TUNISIA	Mr. Tarek Ben Hamida, Counsellor for Foreign Affairs, Permanent Mission
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	Mr. Michael Wood, Counsellor and Legal Adviser, Permanent Mission
UNITED STATES OF AMERICA	Mr. Herbert K. Reis, Adjunct Professor of Law, New York University School of Law
Alternates	
ARGENTINA	Ms. Silvia Fernandez, Secretary - Legal Adviser, Permanent Mission
COLOMBIA	Mr. Hernando Clavijo, Minister Counsellor, Permanent Mission
DOMINICAN REPUBLIC	H.E. Mr. Enriquillo A. del Rosario C., Adviser for Economic Affairs, Permanent Mission
FRANCE	Mr. Stephane Visconti, Chargé de mission au Ministère des affaires étrangères
	Mr. Jean François Bernicot, Conseiller à la Cour des comptes
	Ms. Laurence Fradin, Conseiller référendaire à la Cour des comptes

JAPAN	Mr. Hideki Goda, First Secretary, Permanent Mission
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	Mr. Clive Stitt, Counsellor, Permanent Mission

ANNEX II

List of documents

1. Report of the Secretary-General on jurisdictional and procedural mechanisms for the proper management of resources and funds of the United Nations, A/49/98 and Corr.1 and Add.1 and 2.

2. Note by the Secretary-General on review of the efficiency of the administrative and financial functioning of the United Nations, A/48/876.

3. Note by the Secretary-General on the Office for Inspections and Investigations, A/48/640.

4. Report of the Secretary-General on recovery of misappropriated funds from staff members and former staff members, A/48/572.

5. Measures to facilitate reporting by staff members of inappropriate uses of the resources of the Organization; internal controls relating to the payment of allowances and benefits; and efforts to recover outstanding excess income tax reimbursements, A/47/510.

6. Report of the Advisory Committee on Administrative and Budgetary Questions, Financial Report and Audited Financial Statements, and reports of the Board of Auditors, A/47/500.

7. Report of the Secretary-General on internal control procedures relating to benefits and allowances, A/42/437.

8. Report of the Secretary-General on the feasibility of establishing a single administrative tribunal, A/40/471.

9. General Assembly resolution 48/218 A of 23 December 1993 on the review of the efficiency of the administrative and financial functioning of the United Nations, and 48/218 B of 29 July 1994.

10. Official Records of the General Assembly, Forty-seventh Session, Supplement No. 5 (A/47/5) and addenda on the financial reports and audited financial statements for the biennium ended 31 December 1991 and report of the Board of Auditors.

11. Summary records of selected meetings of the forty-eighth session of the Fifth Committee, A/C.5/48/SR.___.

12. Provisional agenda, A/AC.243/1994/L.1.

13. Note by the Secretariat on internal disciplinary mechanisms, A/AC.243/1994/L.2.

14. Overview by the Secretariat, A/AC.243/1994/L.3.

15. Note by the Secretariat on oversight machinery, dated 7 December 1993.

16. United Nations Administrative Tribunal, Statute and Rules, AT/11/Rev.4.

17. Financial Regulations and Rules of the United Nations (series 100), ST/SGB/Financial Rules/1/Rev.3 (1985).

18. Staff Regulations ST/SGB/Staff Regulations/Rev.22.

19. Article X of the Staff Regulations on disciplinary measures.

20. Article XII of the Staff Regulations on general provisions.

21. Report on standards of conduct in the international civil service, Coord/Civil Service/5, 1986 edition.

22. Administrative instruction on revised disciplinary measures and procedures, ST/AI/371 of 2 August 1991.

23. Administrative instruction on personnel payroll clearance action, ST/AI/155/Rev.2 of 31 August 1990.

24. Personnel Directive on disciplinary procedure for Staff Serving at Offices away from Headquarters and Geneva, PD/1/76.

25. Information circular on internal recourse procedures in the United Nations Secretariat, ST/IC/82/7 of 3 February 1982.

26. Observations regarding measures to reduce alleged cases of fraud: views of the expert from France, A/AC.243/1994/L.6.

ANNEX III

List of invited representatives of United Nations bodies and offices

1. Mr. Martin Sinclair, Chairman, Audit Operations Committee and Director of External Audit, United Kingdom of Great Britain and Northern Ireland.

2. Mr. Stephen Takyi, Director of External Audit, Ghana.

3. Ambassador Mselle, Chairman, Advisory Committee on Administrative and Budgetary Questions.

4. Ms. Maria Vicien-Milburn, Executive Secretary, United Nations Administrative Tribunal.

5. Mr. Mohamed Niazi, Assistant Secretary-General, Office for Inspections and Investigations.

6. Mr. Yukio Takasu, Assistant Secretary-General, Controller.

7. Ms. Christine Dodson, Director of Personnel.

8. Ms. Susan Mills, Deputy Controller.

9. Mr. S. Basnayake, Director, Office of Legal Affairs.

10. Mr. Nicholas Sardegna, Director, Buildings and Commercial Services Division, Office of General Services.

11. Ms. Christine Rollet, Principal Officer, Office of the Under-Secretary-General, Department of Administration and Management.